

1-1 By: Ellis S.B. No. 277
1-2 (In the Senate - Filed March 3, 2003; March 10, 2003, read
1-3 first time and referred to Committee on Government Organization;
1-4 April 8, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 8, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 277 By: Ratliff

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the continuation and functions of the Texas Board of
1-11 Professional Engineers and to the regulation of the practice of
1-12 engineering.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Sections 1001.005 and 1001.051, Occupations
1-15 Code, are amended to read as follows:

1-16 Sec. 1001.005. APPLICATION OF SUNSET ACT. The Texas Board
1-17 of Professional Engineers is subject to Chapter 325, Government
1-18 Code (Texas Sunset Act). Unless continued in existence as provided
1-19 by that chapter, the board is abolished and this chapter expires
1-20 September 1, 2015 [2003].

1-21 Sec. 1001.051. LIMITATION ON EXEMPTION. An exemption under
1-22 this subchapter applies only to a person who does not offer [~~is not~~
1-23 ~~directly or indirectly represented~~] to the public to perform [~~be~~
1-24 ~~legally qualified to engage in the practice of~~] engineering
1-25 services.

1-26 SECTION 2. Section 1001.057, Occupations Code, is amended
1-27 to read as follows:

1-28 Sec. 1001.057. EMPLOYEE OF PRIVATE CORPORATION OR BUSINESS
1-29 ENTITY [~~OR AFFILIATE~~]. (a) This chapter shall not be construed to
1-30 apply to the activities of a private corporation or other business
1-31 entity, or the activities of the full-time employees or other
1-32 personnel under the direct supervision and control of the business
1-33 entity, on or in connection with [~~A regular full-time employee of a~~
1-34 ~~private business entity is exempt from the licensing requirements~~
1-35 ~~of this chapter if~~]:

1-36 (1) reasonable modifications to existing buildings,
1-37 facilities, or other fixtures to real property not accessible to
1-38 the general public and which are owned, leased, or otherwise
1-39 occupied by the entity [~~the employee performs services exclusively~~
1-40 ~~for the business entity or an affiliate of that entity~~]; or

1-41 (2) activities related only to the research,
1-42 development, design, fabrication, production, assembly,
1-43 integration, or service of products manufactured by the entity [~~the~~
1-44 ~~employee's services~~]:

1-45 [(A) ~~are on or in connection with property:~~
1-46 [(i) ~~owned or leased by the business entity~~
1-47 ~~or affiliate, or~~

1-48 [(ii) ~~in which the business entity or~~
1-49 ~~affiliate has an interest, estate, or possessory right, or~~

1-50 [(B) ~~affect exclusively the property, products,~~
1-51 ~~or interests of the business entity or affiliate, and~~

1-52 [(3) ~~the employee does not have the final authority to~~
1-53 ~~approve, or the ultimate responsibility for, engineering designs,~~
1-54 ~~plans, or specifications relating to the property or products that~~
1-55 ~~are to be:~~

1-56 [(A) ~~incorporated into a fixed work, system, or~~
1-57 ~~facility on the property of another, or~~

1-58 [(B) ~~made available to the public~~].

1-59 (b) [~~This exemption includes the use of a job title or~~
1-60 ~~personnel classification by the employee if the employee does not~~
1-61 ~~use:~~

1-62 [(1) ~~the title or classification in connection with an~~
1-63 ~~offer to the public to perform engineering services, and~~

2-1 ~~[(2) a name, title, or word that tends to convey the~~
2-2 ~~impression that a person not licensed under this chapter is~~
2-3 ~~offering to the public to perform engineering services.~~

2-4 ~~[(c)] A person who claims an exemption under this section~~
2-5 ~~and who is determined to have directly or indirectly represented~~
2-6 ~~the person as legally qualified to engage in the practice of~~
2-7 ~~engineering or who is determined to have violated Section 1001.301~~
2-8 ~~may not claim an exemption until the 10th anniversary of the date~~
2-9 ~~the person made that representation.~~

2-10 (c) This exemption does not prohibit:

2-11 (1) a licensed professional engineer who intends to
2-12 incorporate manufactured products into a fixed work, system, or
2-13 facility that is being designed by the licensee on public property
2-14 or the property of others from requiring the manufacturer to have
2-15 plans signed and sealed by a licensed professional engineer; or

2-16 (2) the board from requiring, by rule, that certain
2-17 manufactured products delivered to or used by the public must be
2-18 designed and sealed by a licensed professional engineer, if
2-19 necessary to protect the public health, safety, and welfare.

2-20 (d) For purposes of this section, "products manufactured by
2-21 the entity" also includes computer software, firmware, hardware,
2-22 semiconductor devices, and the production, exploration, and
2-23 transportation of oil and gas and related products.

2-24 SECTION 3. Subsections (b) and (c), Section 1001.058,
2-25 Occupations Code, are amended to read as follows:

2-26 (b) ~~[This exemption includes the use of a job title or~~
2-27 ~~personnel classification by the employee if the employee does not~~
2-28 ~~use:~~

2-29 ~~[(1) the title or classification in connection with an~~
2-30 ~~offer to the public to perform engineering services; and~~

2-31 ~~[(2) a name, title, or word that tends to convey the~~
2-32 ~~impression that a person not licensed under this chapter is~~
2-33 ~~offering to the public to perform engineering services.~~

2-34 ~~[(c)] A person who claims an exemption under this section~~
2-35 ~~and who is determined to have directly or indirectly represented~~
2-36 ~~the person as legally qualified to engage in the practice of~~
2-37 ~~engineering or who is determined to have violated Section 1001.301~~
2-38 ~~may not claim an exemption until the 10th anniversary of the date~~
2-39 ~~the person made that representation.~~

2-40 SECTION 4. Subsection (b), Section 1001.101, Occupations
2-41 Code, is amended to read as follows:

2-42 (b) Appointments to the board shall be made without regard
2-43 to the race, color, disability ~~[creed]~~, sex, religion, age, or
2-44 national origin of the appointee.

2-45 SECTION 5. Subsection (a), Section 1001.102, Occupations
2-46 Code, is amended to read as follows:

2-47 (a) A person may not be ~~[is not eligible for appointment as]~~
2-48 a public member of the board if the person or the person's spouse:

2-49 (1) is registered, certified, or licensed by a ~~[an~~
2-50 ~~occupational]~~ regulatory agency in the field of engineering;

2-51 (2) is employed by or participates in the management
2-52 of a ~~[an agency or]~~ business entity or other organization regulated
2-53 by or receiving money from the board ~~[related to the field of~~
2-54 ~~engineering]~~; ~~[or]~~

2-55 (3) owns or controls, directly or indirectly, more
2-56 than a 10 percent ~~[has a financial]~~ interest ~~[other than as a~~
2-57 ~~consumer]~~ in a business entity or other organization regulated by
2-58 or receiving money from the board; or

2-59 (4) uses or receives a substantial amount of tangible
2-60 goods, services, or money from the board other than compensation or
2-61 reimbursement authorized by law for board membership, attendance,
2-62 or expenses ~~[related to the field of engineering]~~.

2-63 SECTION 6. Section 1001.103, Occupations Code, is amended
2-64 to read as follows:

2-65 Sec. 1001.103. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

2-66 (a) In this section, "Texas trade association" means a cooperative
2-67 and voluntarily joined statewide association of business or
2-68 professional competitors in this state designed to assist its
2-69 members and its industry or profession in dealing with mutual

3-1 business or professional problems and in promoting their common
 3-2 interest.

3-3 (a-1) A person may not be a [A] member [~~or employee~~] of the
 3-4 board and may not be a board employee employed in a "bona fide
 3-5 executive, administrative, or professional capacity," as that
 3-6 phrase is used for purposes of establishing an exemption to the
 3-7 overtime provisions of the federal Fair Labor Standards Act of 1938
 3-8 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

3-9 (1) the person is an officer, employee, or paid
 3-10 consultant of a Texas trade association in the field of engineering
 3-11 [industry]; or

3-12 (2) the person's spouse [~~related within the second~~
 3-13 ~~degree by affinity or consanguinity, as determined under Chapter~~
 3-14 ~~573, Government Code, to a person who]~~ is an officer, manager
 3-15 [employee], or paid consultant of a Texas trade association in the
 3-16 field of engineering [industry].

3-17 (b) A person may not be [~~serve as~~] a member of the board or
 3-18 act as the general counsel to the board if the person is required to
 3-19 register as a lobbyist under Chapter 305, Government Code, because
 3-20 of the person's activities for compensation on behalf of a
 3-21 profession related to the operation of the board.

3-22 SECTION 7. Section 1001.106, Occupations Code, is amended
 3-23 by amending Subsection (a) and adding Subsection (c) to read as
 3-24 follows:

3-25 (a) It is a ground for removal from the board that a member:

3-26 (1) does not have at the time of taking office
 3-27 [appointment] the qualifications required by Sections 1001.101 and
 3-28 [Section] 1001.102;

3-29 (2) does not maintain during service on the board the
 3-30 qualifications required by Sections 1001.101 and [Section]
 3-31 1001.102;

3-32 (3) is ineligible for membership under Section
 3-33 1001.102 or [~~violates a prohibition established by Section]~~
 3-34 1001.103; [~~or~~]

3-35 (4) cannot, because of illness or disability,
 3-36 discharge the member's duties for a substantial part of the member's
 3-37 term; or

3-38 (5) is absent from more than half of the regularly
 3-39 scheduled board meetings that the member is eligible to attend
 3-40 during [~~held in~~] a calendar year without an excuse approved by a
 3-41 majority vote of the board [~~, excluding meetings held while the~~
 3-42 ~~person was not a member].~~

3-43 (c) If the executive director has knowledge that a potential
 3-44 ground for removal exists, the executive director shall notify the
 3-45 presiding officer of the board of the potential ground. The
 3-46 presiding officer shall then notify the governor and the attorney
 3-47 general that a potential ground for removal exists. If the
 3-48 potential ground for removal involves the presiding officer, the
 3-49 executive director shall notify the next highest ranking officer of
 3-50 the board, who shall then notify the governor and the attorney
 3-51 general that a potential ground for removal exists.

3-52 SECTION 8. Section 1001.108, Occupations Code, is amended
 3-53 to read as follows:

3-54 Sec. 1001.108. OFFICERS. The governor shall designate a
 3-55 member of the board as the presiding officer of the board to serve
 3-56 in that capacity at the will of the governor. The board shall elect
 3-57 annually from its members [~~a presiding officer,~~] an assistant
 3-58 presiding officer[~~7~~] and a secretary.

3-59 SECTION 9. Subchapter C, Chapter 1001, Occupations Code, is
 3-60 amended by adding Section 1001.112 to read as follows:

3-61 Sec. 1001.112. TRAINING. (a) A person who is appointed to
 3-62 and qualifies for office as a member of the board may not vote,
 3-63 deliberate, or be counted as a member in attendance at a meeting of
 3-64 the board until the person completes a training program that
 3-65 complies with this section.

3-66 (b) The training program must provide the person with
 3-67 information regarding:

3-68 (1) this chapter;

3-69 (2) the programs operated by the board;

- 4-1 (3) the role and functions of the board;
- 4-2 (4) the rules of the board, with an emphasis on the
- 4-3 rules that relate to disciplinary and investigatory authority;
- 4-4 (5) the current budget for the board;
- 4-5 (6) the results of the most recent formal audit of the
- 4-6 board;
- 4-7 (7) the requirements of:
- 4-8 (A) the open meetings law, Chapter 551,
- 4-9 Government Code;
- 4-10 (B) the public information law, Chapter 552,
- 4-11 Government Code;
- 4-12 (C) the administrative procedure law, Chapter
- 4-13 2001, Government Code; and
- 4-14 (D) other laws relating to public officials,
- 4-15 including conflict-of-interest laws; and
- 4-16 (8) any applicable ethics policies adopted by the
- 4-17 board or the Texas Ethics Commission.

4-18 (c) A person appointed to the board is entitled to
 4-19 reimbursement, as provided by the General Appropriations Act, for
 4-20 the travel expenses incurred in attending the training program
 4-21 regardless of whether the attendance at the program occurs before
 4-22 or after the person qualifies for office.

4-23 SECTION 10. Subchapter D, Chapter 1001, Occupations Code,
 4-24 is amended by adding Sections 1001.153 through 1001.156 to read as
 4-25 follows:

4-26 Sec. 1001.153. DIVISION OF RESPONSIBILITIES. The board
 4-27 shall develop and implement policies that clearly separate the
 4-28 policy-making responsibilities of the board and the management
 4-29 responsibilities of the executive director and the staff of the
 4-30 board.

4-31 Sec. 1001.154. QUALIFICATIONS AND STANDARDS OF CONDUCT
 4-32 INFORMATION. The executive director or the executive director's
 4-33 designee shall provide to members of the board and to board
 4-34 employees, as often as necessary, information regarding the
 4-35 requirements for office or employment under this chapter, including
 4-36 information regarding a person's responsibilities under applicable
 4-37 laws relating to standards of conduct for state officers or
 4-38 employees.

4-39 Sec. 1001.155. EQUAL EMPLOYMENT OPPORTUNITY POLICY;
 4-40 REPORT. (a) The executive director or the executive director's
 4-41 designee shall prepare and maintain a written policy statement that
 4-42 implements a program of equal employment opportunity to ensure that
 4-43 all personnel decisions are made without regard to race, color,
 4-44 disability, sex, religion, age, or national origin.

4-45 (b) The policy statement must include:

4-46 (1) personnel policies, including policies relating
 4-47 to recruitment, evaluation, selection, training, and promotion of
 4-48 personnel, that show the intent of the board to avoid the unlawful
 4-49 employment practices described by Chapter 21, Labor Code; and

4-50 (2) an analysis of the extent to which the composition
 4-51 of the board's personnel is in accordance with state and federal law
 4-52 and a description of reasonable methods to achieve compliance with
 4-53 state and federal law.

4-54 (c) The policy statement must:

4-55 (1) be updated annually;
 4-56 (2) be reviewed by the Commission on Human Rights for
 4-57 compliance with Subsection (b)(1); and
 4-58 (3) be filed with the governor's office.

4-59 Sec. 1001.156. INFORMATION ON STATE EMPLOYEE INCENTIVE
 4-60 PROGRAM. The executive director or the executive director's
 4-61 designee shall provide to board employees information and training
 4-62 on the benefits and methods of participation in the state employee
 4-63 incentive program under Subchapter B, Chapter 2108, Government
 4-64 Code.

4-65 SECTION 11. Section 1001.203, Occupations Code, is amended
 4-66 to read as follows:

4-67 Sec. 1001.203. RULES RESTRICTING ADVERTISING OR
 4-68 COMPETITIVE BIDDING. (a) The board by rule shall prescribe
 4-69 standards for compliance with Subchapter A, Chapter 2254,

Government Code [~~may restrict competitive bidding~~].

(b) Except as provided by Subsection (a), the [The] board may not adopt rules [a rule] restricting advertising or competitive bidding by a license holder [person licensed under this chapter] except to prohibit false, misleading, or deceptive practices [by the person].

(c) In its rules to prohibit false, misleading, or deceptive practices, the [The] board may not include [in its rules to prohibit false, misleading, or deceptive practices] a rule that:

(1) restricts the [person's] use of any medium for advertising;

(2) restricts the use of a license holder's [person's] personal appearance or [use of the person's] voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder [person]; or

(4) restricts the license holder's [person's] advertisement under a trade name.

SECTION 12. Subchapter E, Chapter 1001, Occupations Code, is amended by adding Section 1001.2035 to read as follows:

Sec. 1001.2035. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The board shall adopt rules and guidelines as necessary to comply with Chapter 53.

SECTION 13. Subsection (a), Section 1001.204, Occupations Code, is amended to read as follows:

(a) The board shall establish the following [reasonable and necessary] fees in amounts reasonable and necessary to cover the costs of administering [for the administration of] this chapter [in amounts not to exceed]:

- (1) license fee; [.....\$50]
- (2) annual renewal fee; [.....\$75]
- (3) reciprocal license fee; [.....\$50]
- (4) duplicate license fee; [.....\$5]
- (5) engineer-in-training certificate fee; [.....\$15]
- (6) roster of engineers fee; [.....\$10]
- (7) examination fee; and [.....\$200]
- (8) registration fee for engineering firm. [.....\$100]

SECTION 14. Section 1001.210, Occupations Code, is amended to read as follows:

Sec. 1001.210. CONTINUING EDUCATION PROGRAMS. The board shall [may] recognize, prepare, or administer continuing education programs for its license holders. A license holder must participate in the programs to the extent required by the board to keep the person's license [persons regulated by the board under this chapter. Participation in the programs is voluntary].

SECTION 15. Subchapter E, Chapter 1001, Occupations Code, is amended by adding Sections 1001.214, 1001.215, and 1001.216 to read as follows:

Sec. 1001.214. TECHNOLOGY POLICY. The board shall develop and implement a policy requiring the executive director and board employees to research and propose appropriate technological solutions to improve the board's ability to perform its functions. The technological solutions must:

(1) ensure that the public is able to find information about the board on the Internet;

(2) ensure that persons who want to use the board's services are able to:

(A) interact with the board through the Internet;

and (B) access any service that can be provided effectively through the Internet; and

(3) be cost-effective and developed through the board's planning processes.

Sec. 1001.215. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution

6-1 procedures under Chapter 2009, Government Code, to assist in the
 6-2 resolution of internal and external disputes under the board's
 6-3 jurisdiction.

6-4 (b) The board's procedures relating to alternative dispute
 6-5 resolution must conform, to the extent possible, to any model
 6-6 guidelines issued by the State Office of Administrative Hearings
 6-7 for the use of alternative dispute resolution by state agencies.

6-8 (c) The board shall designate a trained person to:

6-9 (1) coordinate the implementation of the policy
 6-10 adopted under Subsection (a);

6-11 (2) serve as a resource for any training needed to
 6-12 implement the procedures for negotiated rulemaking or alternative
 6-13 dispute resolution; and

6-14 (3) collect data concerning the effectiveness of those
 6-15 procedures, as implemented by the board.

6-16 Sec. 1001.216. JOINT ADVISORY COMMITTEE ON THE PRACTICE OF
 6-17 ENGINEERING AND ARCHITECTURE. (a) The Joint Advisory Committee on
 6-18 the Practice of Engineering and Architecture is an advisory
 6-19 committee to the board and to the Texas Board of Architectural
 6-20 Examiners. The advisory committee consists of:

6-21 (1) three members of the board appointed by the board;
 6-22 and

6-23 (2) three members of the Texas Board of Architectural
 6-24 Examiners appointed by that board.

6-25 (b) Members of the advisory committee serve staggered
 6-26 six-year terms with the terms of one member appointed by the board
 6-27 and one member appointed by the Texas Board of Architectural
 6-28 Examiners expiring each odd-numbered year.

6-29 (c) The advisory committee shall meet at least twice a year.

6-30 (d) The advisory committee shall work to resolve issues that
 6-31 result from the overlap between activities that constitute the
 6-32 practice of engineering and those that constitute the practice of
 6-33 architecture. The advisory committee shall assist each agency in
 6-34 protecting the public rather than advancing the interests of either
 6-35 agency or the profession it regulates.

6-36 (e) The advisory committee shall issue advisory opinions to
 6-37 the board and to the Texas Board of Architectural Examiners on
 6-38 matters relating to the practice of engineering and the practice of
 6-39 architecture, including:

6-40 (1) opinions on whether certain activities constitute
 6-41 the practice of engineering or the practice of architecture;

6-42 (2) specific disciplinary proceedings initiated by
 6-43 either agency; and

6-44 (3) the need for persons working on particular
 6-45 projects to be licensed by the board or registered by the Texas
 6-46 Board of Architectural Examiners.

6-47 (f) If the advisory committee issues an advisory opinion to
 6-48 the board or the Texas Board of Architectural Examiners on a matter,
 6-49 that agency shall notify the committee of the final action taken
 6-50 with regard to the matter. The advisory committee shall consider
 6-51 the action taken by the agency on the matter in any advisory opinion
 6-52 subsequently issued by the committee on a related matter.

6-53 (g) The board and the Texas Board of Architectural Examiners
 6-54 shall enter into a memorandum of understanding regarding the
 6-55 advisory committee that includes the composition and purpose of the
 6-56 committee.

6-57 SECTION 16. Section 1001.251, Occupations Code, is amended
 6-58 by adding Subsection (c) to read as follows:

6-59 (c) The board shall maintain on the board's Internet
 6-60 website:

6-61 (1) information regarding the procedure for filing a
 6-62 complaint with the board; and

6-63 (2) a form that a person may use to file a complaint
 6-64 with the board.

6-65 SECTION 17. Sections 1001.252 and 1001.253, Occupations
 6-66 Code, are amended to read as follows:

6-67 Sec. 1001.252. GENERAL RULES REGARDING COMPLAINT
 6-68 INVESTIGATION AND DISPOSITION [COMPLAINTS]. (a) The board shall
 6-69 adopt rules that permit the board to receive and investigate a

7-1 confidential complaint against a license holder or other person who
 7-2 may have violated this chapter. The board shall maintain the
 7-3 confidentiality of the complaint during the investigation.

7-4 (b) The board by rule shall specify:

7-5 (1) the manner by which a person may contact the board
 7-6 for assistance in filing a complaint;

7-7 (2) the place at which a complaint must be filed;

7-8 (3) the proper form of a complaint; and

7-9 (4) the information that must be included in a
 7-10 complaint.

7-11 (c) The board's procedures must permit a member of the
 7-12 public who desires to file a complaint to:

7-13 (1) speak to an investigator on the staff of the board
 7-14 if the person desires to do so; or

7-15 (2) easily and conveniently access the board's
 7-16 complaint process without being required to speak to an
 7-17 investigator on the staff of the board if the person does not desire
 7-18 to speak to an investigator.

7-19 (d) The board shall consider any written grievance against a
 7-20 license holder or other person filed with the board as a complaint.

7-21 (e) A complaint must include information sufficient for the
 7-22 board to determine whether it has the authority to resolve the
 7-23 complaint. A complaint that contains sufficient information for
 7-24 the board to commence an investigation is not required to include
 7-25 all of the information necessary for the board to determine the
 7-26 validity of the complaint.

7-27 (f) On receipt of a complaint, the board shall determine
 7-28 whether the board has the authority to resolve the complaint. If
 7-29 the board does not have the authority to resolve the complaint, the
 7-30 board shall dismiss the complaint. If the board has the authority
 7-31 to resolve the complaint, the board shall initiate a disciplinary
 7-32 proceeding against the person who is the subject of the complaint.

7-33 (g) The board by rule shall prescribe a method for
 7-34 prioritizing complaints for purposes of complaint investigation.
 7-35 In establishing priorities:

7-36 (1) a complaint that alleges an action that could
 7-37 potentially harm the public takes precedence over a complaint that
 7-38 does not allege an action that could potentially harm the public;
 7-39 and

7-40 (2) with regard to complaints that do not allege an
 7-41 action that could potentially harm the public, a complaint filed by
 7-42 a member of the public takes precedence over a complaint filed by
 7-43 the staff of the board.

7-44 (h) The board's staff is responsible for conducting all
 7-45 phases of complaint investigation, including gathering evidence
 7-46 necessary to determine the validity of the complaint.

7-47 (i) The board may employ or contract with advisors,
 7-48 consultants, engineers, or other persons to provide technical
 7-49 assistance in investigations and disciplinary proceedings. Except
 7-50 for an action involving fraud, conspiracy, or malice, a person
 7-51 whose services are obtained by the board under this subsection is
 7-52 immune from civil liability and may not be subjected to a suit for
 7-53 damages for any investigation, report, recommendation, statement,
 7-54 evaluation, finding made, or other action taken in the course of
 7-55 performing the person's official duties.

7-56 (j) The board's staff shall regularly report to the board on
 7-57 each complaint dismissed by board staff, including:

7-58 (1) the name of the complainant;

7-59 (2) the name of the person who is the subject of the
 7-60 complaint;

7-61 (3) the basis of the complaint; and

7-62 (4) the reason for the dismissal of the complaint.

7-63 Sec. 1001.253. COMPLAINT INFORMATION. (a) The board
 7-64 shall:

7-65 (1) assign a number to each complaint filed with the
 7-66 board; and

7-67 (2) ensure that each phase of the processing of a
 7-68 complaint is appropriately documented.

7-69 (b) The board shall maintain a [keep an information] file on

8-1 ~~[about]~~ each written complaint ~~[relating to a license holder]~~ filed
8-2 with the board. The file must include:

- 8-3 (1) the name of the person who filed the complaint;
- 8-4 (2) the date the complaint is received by the board;
- 8-5 (3) the subject matter of the complaint;
- 8-6 (4) the name of each person contacted in relation to
8-7 the complaint;
- 8-8 (5) a summary of the results of the review or
8-9 investigation of the complaint; and
- 8-10 (6) an explanation of the reason the file was closed,
8-11 if the board closed the file without taking action other than to
8-12 investigate the complaint.

8-13 (c) The board shall provide to the person filing the
8-14 complaint and to each person who is a subject of the complaint a
8-15 copy of the board's policies and procedures relating to complaint
8-16 investigation and resolution.

8-17 (d) The ~~[(b) If a written complaint relating to a license~~
8-18 ~~holder is filed with the board, the]~~ board, at least quarterly and
8-19 until final disposition of the complaint, shall notify the parties
8-20 to the complaint of the status of the complaint unless the notice
8-21 would jeopardize an undercover investigation.

8-22 SECTION 18. Subchapter F, Chapter 1001, Occupations Code,
8-23 is amended by adding Sections 1001.254 and 1001.255 to read as
8-24 follows:

8-25 Sec. 1001.254. STATISTICAL ANALYSIS OF COMPLAINTS.

8-26 (a) The board shall develop and maintain a complaint tracking
8-27 system to monitor the processing of complaints filed with the
8-28 board.

8-29 (b) The board shall include with the board's annual
8-30 financial report under Section 2101.011, Government Code, a
8-31 statistical analysis of the complaints filed with the board during
8-32 the preceding year, including:

- 8-33 (1) the number of complaints filed;
- 8-34 (2) a categorization of complaints filed according to
8-35 the basis of the complaint and the number of complaints in each
8-36 category;
- 8-37 (3) the number of complaints filed by board staff;
- 8-38 (4) the number of complaints filed by persons other
8-39 than board staff;
- 8-40 (5) the average length of time required to resolve a
8-41 complaint;
- 8-42 (6) the number of complaints resolved and the manner
8-43 in which they were resolved, including:

8-44 (A) the number of complaints dismissed and the
8-45 reasons for dismissal; and

8-46 (B) the number of complaints resulting in
8-47 disciplinary action, the disciplinary action taken, and whether the
8-48 disciplinary action taken was imposed by stipulation, agreed
8-49 settlement, consent order, default, or order following a contested
8-50 case hearing; and

8-51 (7) the number of complaints filed that are
8-52 unresolved, the number of those complaints filed by board staff,
8-53 the number of those complaints filed by persons other than board
8-54 staff, and the average length of time that the unresolved
8-55 complaints have been on file.

8-56 Sec. 1001.255. PUBLIC PARTICIPATION. The board shall
8-57 develop and implement policies that provide the public with a
8-58 reasonable opportunity to appear before the board and to speak on
8-59 any issue under the jurisdiction of the board.

8-60 SECTION 19. Section 1001.301, Occupations Code, is amended
8-61 by amending Subsections (b) and (c) and adding Subsections (f) and
8-62 (g) to read as follows:

8-63 (b) Except as provided by Subsection (f), a [A] person may
8-64 not, unless the person holds a license issued under this chapter,
8-65 directly or indirectly use or cause to be used as a professional,
8-66 business, or commercial identification, title, name,
8-67 representation, claim, asset, or means of advantage or benefit any
8-68 of, or a variation or abbreviation of, the following terms:

- 8-69 (1) "engineer";

- 9-1 (2) "professional engineer";
 9-2 (3) "licensed engineer";
 9-3 (4) "registered engineer";
 9-4 (5) "registered professional engineer";
 9-5 (6) "licensed professional engineer"; or
 9-6 (7) "engineered."

9-7 (c) Except as provided by Subsection (f), a [A] person may
 9-8 not directly or indirectly use or cause to be used an abbreviation,
 9-9 word, symbol, slogan, or sign that tends or is likely to create an
 9-10 impression with the public that the person is qualified or
 9-11 authorized to engage in the practice of engineering unless the
 9-12 person holds a license and is practicing under this chapter.

9-13 (f) Notwithstanding the other provisions of this chapter, a
 9-14 regular employee of a business entity who is engaged in engineering
 9-15 activities but is exempt from the licensing requirements of this
 9-16 chapter under Sections 1001.057 or 1001.058 is not prohibited from
 9-17 using the term "engineer" on a business card, cover letter, or other
 9-18 form of correspondence that is made available to the public if the
 9-19 person does not:

9-20 (1) offer to the public to perform engineering
 9-21 services; or

9-22 (2) use the title in any context outside the scope of
 9-23 the exemption in a manner that represents an ability or willingness
 9-24 to perform engineering services or make an engineering judgment
 9-25 requiring a licensed professional engineer.

9-26 (g) Subsection (f) does not authorize a person to use a term
 9-27 listed in Subsections (b)(2)-(6) or a variation or abbreviation of
 9-28 one of those terms.

9-29 SECTION 20. Section 1001.303, Occupations Code, is amended
 9-30 to read as follows:

9-31 Sec. 1001.303. APPLICATION FOR LICENSE. (a) An applicant
 9-32 for a license under this chapter must submit an [a-sworn]
 9-33 application on a form prescribed and provided by the board.

9-34 (b) The application must contain:

9-35 (1) personal information about the applicant, as
 9-36 required by board rule;

9-37 (2) a description of the applicant's education;

9-38 (3) a detailed summary of the applicant's actual
 9-39 engineering work;

9-40 (4) a description of any engineering license or
 9-41 registration previously issued to the applicant and any denial,
 9-42 revocation, or suspension of an engineering license or registration
 9-43 held by the applicant;

9-44 (5) a description of any criminal offense of which the
 9-45 applicant has been convicted; and

9-46 (6) at least ~~three~~ [five] references from engineers
 9-47 [~~individuals~~] having personal knowledge of the applicant's
 9-48 character, reputation, [and] general suitability for a license, and
 9-49 [~~of whom at least three must be engineers having personal knowledge~~
 9-50 of the applicant's] engineering experience.

9-51 SECTION 21. Section 1001.304, Occupations Code, is amended
 9-52 by adding Subsection (d) to read as follows:

9-53 (d) The board by rule shall ensure that the examination is
 9-54 administered to applicants with disabilities in compliance with the
 9-55 Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et
 9-56 seq.), and its subsequent amendments.

9-57 SECTION 22. Sections 1001.306, 1001.310, and 1001.311,
 9-58 Occupations Code, are amended to read as follows:

9-59 Sec. 1001.306. EXAMINATION RESULTS. (a) Not later than
 9-60 the 30th day after the date a person takes a licensing examination
 9-61 under this chapter, the [The] board shall notify the person [each
 9-62 examinee] of the results of the [an] examination [not later than the
 9-63 30th day after the date the examination is administered].

9-64 (a-1) If the [an] examination is graded or reviewed by a
 9-65 [national] testing service:

9-66 (1) [7] the board shall notify the person [each
 9-67 examinee] of the results of the examination not later than the 14th
 9-68 day after the date the board receives the results from the testing
 9-69 service; and

10-1 (2) if ~~[-~~
 10-2 ~~[(b) If the]~~ notice of the examination results ~~[of an~~
 10-3 ~~examination]~~ will be delayed for longer than 90 days after the
 10-4 examination date, the board shall notify the person ~~[each examinee]~~
 10-5 of the reason for the delay before the 90th day.

10-6 (b) The board may require a testing service to notify a
 10-7 person of the results of the person's examination.

10-8 (c) If requested in writing by a person who fails a
 10-9 licensing ~~[the]~~ examination administered under this chapter, the
 10-10 board shall furnish ~~[provide to]~~ the person with an analysis of the
 10-11 person's performance on the examination.

10-12 Sec. 1001.310. TEMPORARY OR PROVISIONAL LICENSE. (a) The
 10-13 board by rule may adopt standards and procedures for issuing a
 10-14 temporary or provisional license under this chapter.

10-15 (b) The board may issue a provisional license to an
 10-16 applicant currently licensed in another jurisdiction who seeks a
 10-17 license in this state and who:

10-18 (1) has been licensed in good standing as an engineer
 10-19 for at least two years in another jurisdiction, including a foreign
 10-20 country, that has licensing requirements substantially equivalent
 10-21 to the requirements of this chapter;

10-22 (2) has passed a national or other examination
 10-23 recognized by the board relating to the practice of engineering;
 10-24 and

10-25 (3) is sponsored by a person licensed by the board
 10-26 under this chapter with whom the provisional license holder will
 10-27 practice during the time the person holds a provisional license.

10-28 (c) The board may waive the requirement of Subsection (b)(3)
 10-29 for an applicant if the board determines that compliance with that
 10-30 subsection would be a hardship to the applicant.

10-31 (d) A provisional license is valid until the date the board
 10-32 approves or denies the provisional license holder's application for
 10-33 a license. The board shall issue a license under this chapter to
 10-34 the provisional license holder if:

10-35 (1) the provisional license holder is eligible to be
 10-36 licensed under Section 1001.311(b); or

10-37 (2) the provisional license holder meets the following
 10-38 requirements:

10-39 (A) the provisional license holder passes an
 10-40 examination that tests the provisional license holder's knowledge
 10-41 and understanding of the laws and rules relating to the practice of
 10-42 engineering in this state;

10-43 (B) the board verifies that the provisional
 10-44 license holder meets the academic and experience requirements for a
 10-45 license under this chapter; and

10-46 (C) the provisional license holder satisfies any
 10-47 other licensing requirements under this chapter.

10-48 (e) The board must approve or deny a provisional license
 10-49 holder's application for a license not later than the 180th day
 10-50 after the date the provisional license is issued. The board may
 10-51 extend the 180-day period if the results of an examination have not
 10-52 been received by the board before the end of that period.

10-53 (f) The board may establish a fee for provisional licenses
 10-54 in an amount reasonable and necessary to cover the cost of issuing
 10-55 the license.

10-56 Sec. 1001.311. APPLICATION BY NONRESIDENT. (a) A person
 10-57 who holds a license or certificate of registration issued by
 10-58 another state or a foreign country may apply for a license in this
 10-59 state.

10-60 (b) The board may waive any prerequisite to obtaining a
 10-61 license for an applicant after reviewing the applicant's
 10-62 credentials and determining that the applicant holds a license
 10-63 issued by another jurisdiction that has licensing requirements
 10-64 substantially equivalent to those of this state.

10-65 SECTION 23. Subsection (b), Section 1001.351, Occupations
 10-66 Code, is amended to read as follows:

10-67 (b) The board by rule may adopt a system under which
 10-68 licenses and registrations expire on various dates during the year.
 10-69 For the year in which the license or registration expiration date is

11-1 changed, the board shall prorate license or registration fees on a
 11-2 monthly basis so that each license or registration holder pays only
 11-3 that portion of the license or registration fee that is allocable to
 11-4 the number of months during which the license or registration is
 11-5 valid. On renewal of the license or registration on the new
 11-6 expiration date, the total license or registration renewal fee is
 11-7 payable [and shall adjust renewal dates accordingly].

11-8 SECTION 24. Sections 1001.352 and 1001.353, Occupations
 11-9 Code, are amended to read as follows:

11-10 Sec. 1001.352. NOTICE OF LICENSE EXPIRATION. Not later
 11-11 than the 30th day [~~one month~~] before the [~~expiration~~] date [~~of~~] a
 11-12 person's license is scheduled to expire, the board shall send [~~mail~~
 11-13 ~~to the person at the last address the person provided to the board~~]
 11-14 written notice of the impending [~~license~~] expiration to the person
 11-15 at the person's last known address according to the records of the
 11-16 board [~~date and the amount of the annual renewal fee for the~~
 11-17 ~~license~~].

11-18 Sec. 1001.353. PROCEDURE FOR RENEWAL. (a) A person who is
 11-19 otherwise eligible to renew a license may renew an unexpired
 11-20 license by paying the required renewal fee to the board before the
 11-21 expiration date of the license. A person whose license has expired
 11-22 may not engage in activities that require a license until the
 11-23 license has been renewed.

11-24 (b) A person whose license has been expired for 90 days or
 11-25 less may renew the license by paying to the board a renewal fee that
 11-26 is equal to 1-1/2 times the normally [~~the~~] required renewal fee [~~and~~
 11-27 ~~a penalty fee set by the board~~].

11-28 (c) A person whose license has been expired for more than 90
 11-29 days but less than two years may renew the license by paying to the
 11-30 board a renewal fee that is equal to two times the normally required
 11-31 renewal fee [~~all unpaid renewal fees and a penalty fee set by the~~
 11-32 ~~board~~].

11-33 (d) A person whose license has been expired for two years or
 11-34 more may not renew the license. The person may obtain a new license
 11-35 by complying with the requirements and procedures, including the
 11-36 examination requirements, for obtaining an original license [~~that~~
 11-37 ~~are in effect at the time the person applies~~].

11-38 SECTION 25. Subchapter H, Chapter 1001, Occupations Code,
 11-39 is amended by adding Section 1001.354 to read as follows:

11-40 Sec. 1001.354. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE
 11-41 PRACTITIONER. (a) A person who was licensed in this state, moved
 11-42 to another state, and is currently licensed and has been in practice
 11-43 in the other state for the two years preceding the date of
 11-44 application may obtain a new license without reexamination.

11-45 (b) The person must pay to the board a fee that is equal to
 11-46 two times the normally required renewal fee for the license.

11-47 SECTION 26. Section 1001.405, Occupations Code, is amended
 11-48 by adding Subsection (g) to read as follows:

11-49 (g) Notwithstanding the other provisions of this section,
 11-50 the board by rule may provide that a business entity that has not
 11-51 previously registered with the board and that is engaged in the
 11-52 practice of engineering in violation of Subsection (b) is not
 11-53 subject to disciplinary action for the violation if the business
 11-54 entity registers with the board not later than the 30th day after
 11-55 the date the board gives written notice to the business entity of
 11-56 the registration requirement. This subsection does not apply to a
 11-57 business entity whose registration has expired.

11-58 SECTION 27. Section 1001.406, Occupations Code, is amended
 11-59 to read as follows:

11-60 Sec. 1001.406. GRADUATE ENGINEERS. (a) A graduate of a
 11-61 [~~public~~] university recognized by the American Association of
 11-62 Colleges and Universities who has a degree from an engineering
 11-63 program accredited by the Accreditation Board for Engineering and
 11-64 Technology (ABET) has the right to:

11-65 (1) disclose any college degree received by the
 11-66 person; and

11-67 (2) use the term "graduate engineer" on the person's
 11-68 stationery or business cards or in personal communications of any
 11-69 character.

12-1 (b) A graduate engineer who is employed in a firm registered
 12-2 under this chapter and who is working under the direct supervision
 12-3 of a licensed professional engineer may use the term "engineer" on
 12-4 the person's stationery or business cards or in personal
 12-5 communications of any character.

12-6 SECTION 28. Subchapter J, Chapter 1001, Occupations Code,
 12-7 is amended by adding Sections 1001.4525, 1001.4526, and 1001.4527
 12-8 to read as follows:

12-9 Sec. 1001.4525. PROBATION. (a) If a person's license
 12-10 suspension is probated, the board may require the person to:

12-11 (1) report regularly to the board on matters that are
 12-12 the basis of the probation;

12-13 (2) limit practice to the areas prescribed by the
 12-14 board; or

12-15 (3) continue or review professional education until
 12-16 the person attains a degree of skill satisfactory to the board in
 12-17 those areas that are the basis of the probation.

12-18 (b) The board by rule shall adopt written guidelines to
 12-19 ensure that probation is administered consistently.

12-20 Sec. 1001.4526. RESTITUTION. (a) Subject to Subsection
 12-21 (b), the board may order a person licensed or registered under this
 12-22 chapter to pay restitution to a consumer as provided in an agreement
 12-23 resulting from an informal settlement conference instead of or in
 12-24 addition to imposing an administrative penalty under this chapter.

12-25 (b) The amount of restitution ordered as provided in an
 12-26 agreement resulting from an informal settlement conference may not
 12-27 exceed the amount the consumer paid to the person for a service
 12-28 regulated by this chapter. The board may not require payment of
 12-29 other damages or estimate harm in a restitution order.

12-30 Sec. 1001.4527. RECUSAL OF BOARD MEMBER. (a) A board
 12-31 member who participated in the investigation of a complaint or in
 12-32 informal settlement negotiations regarding the complaint:

12-33 (1) may not participate in the discussion of or vote on
 12-34 the matter at a board meeting related to the complaint; and

12-35 (2) shall state at the meeting why the member is
 12-36 prohibited from participating in the discussion of or voting on the
 12-37 matter.

12-38 (b) A statement under Subsection (a)(2) shall be entered
 12-39 into the minutes of the meeting.

12-40 SECTION 29. (a) Not later than January 1, 2004, the Texas
 12-41 Board of Professional Engineers shall adopt the rules required by
 12-42 Section 1001.2035, Occupations Code, as added by this Act.

12-43 (b) Not later than September 1, 2005, the Texas Board of
 12-44 Professional Engineers shall adopt the written guidelines required
 12-45 by Section 1001.4525, Occupations Code, as added by this Act.

12-46 SECTION 30. (a) This Act takes effect September 1, 2003.

12-47 (b) The changes in law made by Sections 1001.102 and
 12-48 1001.103, Occupations Code, as amended by this Act, and Section
 12-49 1001.112, Occupations Code, as added by this Act, in the
 12-50 prohibitions on or qualifications of members of the Texas Board of
 12-51 Professional Engineers do not affect the entitlement of a member
 12-52 serving on the Texas Board of Professional Engineers immediately
 12-53 before September 1, 2003, to continue to serve and function as a
 12-54 member of the Texas Board of Professional Engineers for the
 12-55 remainder of the member's term. Those changes in law apply only to
 12-56 a member appointed on or after September 1, 2003.

12-57 (c) The change in law made by Section 1001.108, Occupations
 12-58 Code, as amended by this Act, does not affect the entitlement of a
 12-59 person who was serving as presiding officer of the Texas Board of
 12-60 Professional Engineers immediately before September 1, 2003, to
 12-61 continue to serve and function in that capacity for the remainder of
 12-62 the person's term as presiding officer. That change in law applies
 12-63 only to the designation of a presiding officer of the board after
 12-64 that person's term as presiding officer expires.

12-65 (d) The changes in law made by this Act to Chapter 1001,
 12-66 Occupations Code, relating to the investigation of a complaint
 12-67 apply only to a complaint filed with the Texas Board of Professional
 12-68 Engineers on or after the effective date of this Act. A complaint
 12-69 filed with the board before the effective date of this Act is

13-1 governed by the law as it existed immediately before that date, and
13-2 the former law is continued in effect for that purpose.

13-3

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